



Kendall County

Purchase Order Terms and Conditions

DEFINITIONS:

As used in this Purchase Order, “County” refers to the County of Kendall, Illinois; “Vendor” refers to the vendor, supplier, contractor, or other party identified on the Purchase Order for Goods which incorporates these purchase order terms by reference; “Purchase Order” refers to the language herein by reference and agreed to by County in writing; and “Goods” refers to the Goods, products, items or services to be acquired by the County pursuant to this Purchase Order.

AGREEMENT:

Vendor agrees to sell the Goods to the County, and the County agrees to purchase the Goods from Vendor, under the terms and conditions specified in this Purchase Order. This Purchase Order and any contracts attached hereto constitutes the entire agreement between the Vendor and the County covering the Goods and services described herein. Failure to decline terms and conditions in writing constitutes agreement to the terms of the Purchase Order as stated. The Vendor’s quotation is incorporated in and made a part of this Purchase Order only to the extent of specifying in the nature and description of the Goods and services ordered and then only to the extent that such items are consistent with the other terms of this Purchase Order.

DELIVERY:

Deliveries will be F.O.B destination. Vendor shall pay all transportation and handling charges. Vendor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Vendor remains liable for latent defects, fraud, and warranties following acceptance of the Goods.

FREIGHT:

Freight must be included in bid pricing, all-inclusive, unless otherwise noted in Vendor’s response/submission.

DEFAULT:

Time is of the essence of this contract and if delivery of acceptable items or rendering of services is not completed by the time promised, the County reserves the right, without liability, in addition to its other rights and remedies, to terminate the contract

by notice effective when received by Vendor, as to stated items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge the Vendor with any or all losses incurred.

INSPECTIONS:

The County may inspect and test the Goods and related services. The County may reject non-conforming Goods and require Vendor to correct them without charge or deliver them at a reduced price, as negotiated. If Vendor does not cure any defects within a reasonable time, the County may reject the Goods and cancel the Purchase Order in whole or in part. This paragraph does not affect or limit the County's rights, including its rights under the Uniform Commercial Code (UCC).

WORKMANSHIP:

Items must be manufactured according to the highest traditions of the industry and must meet all commercial standards of quality. The County must be the sole judge of acceptable products. Unacceptable products will be rejected and suitable price adjustments made.

WARRANTY:

Vendor warrants that all Goods and services furnished hereunder will conform in all respects to the terms of the solicitation, including any drawings, specifications or standards incorporated herein, and that they will be free from latent and patent defects in materials, workmanship and title and will be free from such defects in design. In addition, Vendor warrants that said Goods and services are suitable for, and will perform in accordance with, the purposes for which they are purchased, fabricated, manufactured and designed or for such other purposes as are expressly specified in this solicitation.

The County may return any nonconforming or defective items to the Vendor or require correction or replacement of the item at the time the defect is discovered, all at the Vendor's risk and expense. Acceptance shall not relieve the Vendor of its responsibility. Vendor expressly warrants that all goods and services (real property and all structures thereon) will conform to the drawings, materials, performance and any other specifications, samples or other description furnished by the County, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship.

Vendor agrees that these warranties shall run to the County, its successor, assigns, customers and users of the products or services and that these warranties shall survive acceptance of the goods or performance of the services.

PAYMENT:

The Vendor shall furnish the County with an itemized invoice addressed to the Bill to Address, as indicated in the Purchase Order. Invoices must include the Purchase Order number, Vendor's name and phone number, and clearly list quantities, item descriptions and units of measure.

Payment shall be made in accordance with applicable provisions of the "Local Government Prompt Payment Act." Payment will be processed after receipt of invoice or appropriate affidavit.

TAXES:

The County is exempt from state and local taxes. Tax exempt ID # E99959003.

CHANGE ORDERS:

The County reserves the right to revoke, amend or modify this Purchase Order or any contract attached thereto at any time. Any difference in price required by any such change shall be equitably adjusted and the Purchase Order shall be modified in writing accordingly. Vendor's receipt of the County's written change order without response received by the County within ten (10) days or Vendor's shipment or other performance reflecting the change, whichever occurs first, shall be Vendor's acceptance of the change.

RECOURSE FOR UNSATISFACTORY MATERIALS:

Payment must be contingent upon the County's inspection of and satisfaction with completed work. Any defective work or materials, non-conformance to bid specifications, damaged materials, or unsatisfactory installation must be corrected to the County's satisfaction by the successful vendor at no additional charge.

REGULATORY COMPLIANCE:

Vendor represents and warrants that the Goods or services furnished hereunder (including all labels, packages and container for said Goods) comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act as amended, with respect to design, construction, manufacture or use for their intended purpose of said goods or services. Vendor shall furnish "Material Safety Data Sheet" in compliance with the Illinois Toxic Substances Disclosure to Employees Act.

TERMINATION:

Failure to comply with the terms and conditions as herein stated must be cause for cancellation of the Purchase Order. The County will give written notice of unsatisfactory performance, and Vendor will be allowed thirty (30) days to take corrective action and accomplish satisfactory control. If at the end of the thirty days, the County deems the Vendor's performance still unsatisfactory, the contract must be canceled. The exercise of its right of cancellations must not limit the County's right to seek any other remedies allowed by law.

UNAUTHORIZED PURCHASES:

An unauthorized purchase occurs when materials, supplies, equipment, services, construction and construction related services or any other expense is charged to the County by a person who has not been given such authority or for purchases made in violation of the Kendall County Purchasing Ordinance. Unauthorized purchases are void, and the County shall not be obligated to pay for unauthorized purchases.

VENDOR AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF IL:

Vendor confirms that it is authorized to conduct business in the state of Illinois.

UNAPPROPRIATED FUNDS:

The obligation of the County for payment to the Vendor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

PUBLIC ACCESS TO PURCHASE INFORMATION

Details of this purchase are public records subject to the exceptions to disclosure as provided for in the Illinois Freedom of Information Act (5 ILCS 140/1, et seq.)

VENUE

The parties agree that the venue for any legal proceedings between the Vendor and the County shall be the Circuit Court of Kendall County, Illinois, Twenty-Third Judicial Circuit, State of Illinois.

INDEMNIFICATION

Vendor shall indemnify, hold harmless and defend with counsel of County's own choosing, County, its past, present and future elected officials, department heads, employees, insurers, and agents (hereinafter collectively referred to as "Releases") from and against all liability, claims, suits, causes of action, demands, proceedings,

set-offs, liens, attachments, debts, expenses, judgments, or other liabilities including costs, reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property, of whatsoever kind or nature as well as for any breach of any covenant in the Purchase Order or ancillary documents and any breach by Vendor of any representations or warranties made within the contract documents (collectively, the "Claims"), to the extent such Claims result from the performance of this Purchase Order by Vendor or those Claims are due to any act or omission, neglect, willful acts, errors, omissions or misconduct of Vendor in its performance under this Purchase Order or the performance or quality of the Goods. Nothing contained herein shall be construed as prohibiting the County, its past, present, and future elected officials, officers, employees, board members, and agents from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to 55 ILCS 5/3-9005, any attorney representing the County, under this paragraph, shall be approved by the Kendall County State's Attorney and shall be appointed as a Special Assistant State's Attorney. The County's participation in its defense shall not remove Vendor's duty to indemnify and hold the County harmless as set forth above. The County does not waive its defenses or immunities under the Local Government and Government Employee Tort Immunity Act. (745 ILCS 10.1 et seq.) by reason of indemnification or insurance. Indemnification obligations shall survive the termination of this Agreement.

INSURANCE

Vendor will obtain and continue in force all insurance as set forth herein. All coverage shall be placed with insurers authorized to conduct business in Illinois with a current A.M. Best's rating of no less than A:VII.

All coverage shall be at least as broad as the following:

Commercial General Liability ("CGL"): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be \$2,000,000.

Umbrella/Excess Liability: Limits of liability equal to or greater than \$5,000,000 per occurrence and \$5,000,000 in aggregate.

Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Vendor has no owned autos, Code 8 (hired) and 9

(non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Workers' Compensation Insurance: Insurance as required by the State of Illinois, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

The County reserves the right at any time to demand coverage as an additional insured on Vendor's liability policies.

If Vendor maintains broader coverage and/or higher limits than the minimums shown above, the County shall be entitled to the broader coverage and/or the higher limits maintained by Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

For any claims related to this Purchase Order, Vendor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 with respect to the County, its past present and future officers, officials, employees, and volunteers. Any insurance maintained by the County, its past present or future officers, officials, employees, or volunteers shall be excess of Vendor's insurance and shall not contribute with it.

Vendor hereby grants to the County and its, past, present, and future its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of said Vendor may acquire against the County by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.